KABELECT SDN BHD *a*

v.

TELEKOM CELLULAR SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR *b*
KL REKHRAJ J
[CIVIL SUIT NO: D6-22-296-97]
21 OCTOBER 1997

CIVIL PROCEDURE: *Appeal - Setting aside Rules of the High Court 1980, O. 14 - Whether settlement had rendered appeal nugatory - Whether appeal could be proceeded without defendant reserving liberty to do so - Whether could appeal for stay of execution when judgment sum settled* *c*

EVIDENCE: *Documentary evidence - Whether facts in letter could be admitted as evidence of defendant's intention - Interpretation of contents in letter - Whether reservation of admissibility on contents of letter should be made - Evidence Act 1950, ss. 2, 94* *d*

The plaintiff had, pursuant to O. 14 of the Rules of the High Court 1980, obtained a summary judgment against the defendant. The defendant had applied to set aside the order and also for a stay of execution. Both the applications were rejected and the defendants appealed. *e*

The plaintiff then applied to strike off the appeals under O. 18 r. 19 of the Rules of the High Court 1980 ('the RHC'), for want of a cause as the defendant had through its solicitors' letter and cheques, paid the judgment sum together with interest as full and final satisfaction of the said judgment. *f*

The issues before the court were: (i) whether the appeals of the defendant were nugatory; (ii) whether letter could be admitted as evidence (iii) whether contents in defendants's solicitors' letter admissible as admissions of facts, without the reservation of any qualification as to its admissibility *g*

Held:

[1] Under s. 94 of the Evidence Act 1950 ('the Act'), it is a rule of interpretation that when the language in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts. Therefore when a court is asked to interpret a document, it looks at its language. If the language is clear and unambiguous and applies accurately to existing facts, it shall accept the ordinary meaning, for the duty of the court is to take the meaning of the words used by the author, ie, his *h* *i*

expressed intention. When a court looks into all the circumstances to find an author's intention, it is only for the purpose of finding out whether the words apply accurately to existing facts. If the words are clear in the context of the surrounding circumstances, the court cannot rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document.

[1a] Taking the words used in the defendant's solicitors' letter, whether in totality or in isolation, without the defendant's solicitors having reserved for the defendant the right or liberty to proceed with the appeals, they had by their conduct endorsed and acknowledged the judgment debt as one that was due and payable, and that was a clear admission within the meaning of O. 27 r. 3. of the RHC.

[2] The admission of the statement of facts in or by the letter from the defendant's solicitors was admissible, as it was made between the same parties, without the reservation of any qualification as to its admissibility. The defendant's solicitors were entitled to or ought to have preserved for their clients the right and the liberty to question the judgment, but they had failed to do so.

[3] The language in the said letter was plain by itself, and it applied accurately to the existing facts of the case. It expressly conveyed what was intended to by the choice of words, which had been well punctuated and defined to admit the only meanings conveyed therein. Therefore, the submission by the defendant's solicitors, that by virtue of s. 2 of the Act affidavit evidence was not admissible in interlocutory proceedings, or that there could be inferences within the lines against that admission, should fail because there was no ambiguity in the letter.

[4] The very foundation or the substance of the appeal had been destroyed and had thus become nugatory. It had been the fundamental feature of the judiciary system that the courts do only decide issues that are alive, not dead or those that have become hypothetical or only of academic importance. In the circumstances the plaintiff's application under O. 18 r. 19 of the RHC was allowed.

[Appeals dismissed with costs.]

Cases referred to:
Kamla Devi v. Tahhatmal [1964] AIR Supreme Court ***(refd)***
Parmeshr v. Atti [1958] AIR PUNJ 79 ***(refd)***
Rankie & Garton Sons & Co Ltd [1979] 2 All ER 1185 ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 2, 94
Rules of the High Court 1980, O. 14, O. 18 r. 19, O. 27 r. 3, O. 92 r. 4

Other sources referred to:
Black's Law Dictionary, Henry Campbell Black, 6th edn, p 17
Dictionary of Canadian Law, Daphne A Dukelow & Betsy Nuse, 2nd edn 1995, p 452
Mitras Legal & Commercial Dictionary, AN Saha, 5th edn, p 383

For the plaintiff - Peter Raj (W Satchithanandhan with him); M/s VK Lingam & Co
For the defendant - Tommy Thomas (Sitpal Selvaratnam & Allen Gomez with him); M/s Skrine & Co

Reported by Eugene Ong

JUDGMENT

KL Rekhraj J:

The plaintiffs – Kabelect Sdn Bhd filed an action against the defendants, Telekom Cellular Sdn. Bhd., for a claim in the sum of RM7,757,419.15 sen together with interest thereon at the rate of eight per cent per annum from the date of the filing of the writ to the date of realisation of the judgment sum and costs.

The defendants filed their defence on 22 May 1997 denying the plaintiff's claim and putting the plaintiffs to proof thereof

The plaintiffs then filed a summons in chambers for summary judgment pursuant to O. 14 of the Rules of the High Court 1980, supported by an affidavit of Ahmad bin Ali – the Managing Director of the plaintiff company.

Cutting short the further preliminaries for the purposes of this decision, the Senior Assistant Registrar of the High Court, upon hearing the solicitors for the parties, gave summary judgment in favour of the plaintiffs on 8 July 1997; and whereupon the defendants asked for and obtained an interlocutory stay of execution pending the defendants filing a formal application for stay to the judge in chambers and an appeal against the decision of the Senior Assistant Registrar.

The defendants filed their **Notice of Appeal on 9 July 1997;** and the formal application for stay of execution on the judgment, and which application was fixed for hearing on 16 July 1997, before the said Senior Assistant Registrar.

Upon hearing the said application for stay; she upon a deferred decision delivered on 18 July 1997, refused the stay; and against which decision the defendants also appealed to the judge in chambers. There are therefore two appeals pending before me – being encl. (12) – appeal on an O. 14 application; and encl. (19) being the appeal against the stay of proceedings; both of which appeals were fixed for hearing before the judge for 31 July 1997.

Before the hearing of the said two appeals; the plaintiffs proceeded to file encl. (21); an application to strike off the appeals under O. 18 r. 19 that by virtue of the payments already made by the defendants of the judgment debt; the appeals have thus become nugatory; and/or want of a reasonable cause becoming frivolous, or vexatious, or an abuse of the process of court; and/or under O. 92 r. 4 under the Court's inherent powers; or under O. 27 r. 3 as admissions; available under the Rules of the High Court 1980; and which application was also fixed for 31 July 1997; to be heard together with the appeals.

On 31 July, there were before me the two appeals of the defendants; and the application of the plaintiffs, the latter praying that the said appeals be dismissed and struck off for want of a cause as the defendants have since the judgment, through the defendants solicitors' letter dated 18 July 1997 issued and paid in favour of the plaintiffs two MPBP cheques No. 661608 and 661655 for the total judgment sum inclusive of interest worked up as that date, **as full and final payment in satisfaction of the said judgment.**

I then directed to the parties solicitors to address the court on the question posed:

> what is the effect of the payment on the appeals – encls. (12) and (19) upon the judgment, which has now been fully satisfied by the debtor to the creditor; without the debtor in anyway reserving for itself any qualification or liberty in proceeding with the appeals; whilst or when making the payment?.

This was the crux of the matter; and I take the liberty at this stage to reproduce the letter from M/s Skrine & Co. as solicitors for the defendants, addressed to the plaintiffs solicitors, Messrs. V.K. Lingam & Co., Level 10, Menara Shahzan Insan, No. 30 Jalan Sultan Ismail, 50250 Kuala Lumpur.

18th July 1997 BY HAND

Dear Sir,

Kuala Lumpur High Court Suit
No. D6-22-296-1997, KABELECT
SDN. BHD. vs. TELEKOM CELLULAR
SDN. BHD.

In accordance with the Judgment awarded by Court on 8th July, 1997 in the above-mentioned suit, we enclose herewith two MPBB cheques Nos. 661608 and 661655 for the sums of RM8,054,911.24 sen and RM3,315,89 respectively as full and final payment in satisfaction of the said Judgment.

Kindly acknowledge receipt of the same.

Yours faithfully,

(Signed.)

encl:
2 cheques.

c.c. clients.

The defendants solicitors letter must now be read **within the four corners of the contents therein;** together with the enclosure of the cheques dated 16 July 1997, in payment of the judgment. The words there used by the solicitors were of choice and select – plain and precise in their natural meaning, accurately applying the facts to the case. Therefore, the language being clear and exclusive, no extraneous evidence can be supplied or implied to the contrary or to bring about any other conclusion.

Section 94 of the Evidence Act 1950, which reads – "When language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.", has laid down a rule of interpretation of the language of a document when it is plain and applies accurately to existing facts. It says that evidence may be given to show that it was not meant to apply to such facts. When a court is asked to interpret a document, it looks at its language. If the language is clear and unambiguous and applies accurately to existing facts, it shall accept the ordinary meaning, for the duty of the court is not to delve deep into the intricacies of the human mind to ascertain one's undisclosed intention, but only to take the meaning of the words used by him, that is to say his expressed intentions. Sometimes when it is said that a court should look into all the circumstances to find an author's intention, it is only for the purpose of finding out whether the words apply accurately to existing facts. But if the words are clear in the context of the surrounding circumstances, **the court cannot** rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document. (Subra Rao J in the case of *Kamla Devi v. Tahhatmal* AIR 1964 Supreme Court 859 at 863.)

Bearing this principle in mind, let us look at the **key words** used in the letter.

"In accordance" and **"as full and final payment in satisfaction of the said judgment"**.

The word **"in accordance"** is well defined in:

(i) *Mitras Legal & Commercial Dictionary,* 5th Edn. by A.N. Saha at p. 383 – meaning "in conformity or as provided for"

(ii) *Black's Law Dictionary* 6th Edn. by Henry Campbell Black at p. 17 – "Agreement; harmony; concord; **conformity**" (conformity to the judgment).

"FULL" means – abundantly provided sufficient in quantity or degree, complete, entire and detailed. Having no open space (no room for movement) – ample, perfect, mature, no longer wanting in any essential quality. (*Black's Law Dictionary* at p. 672.)

"FINAL" – is also defined in the Dictionary of Canadian Law 2nd Edn. (1995) by Daphne A. Dukelow & Betsy Nuse at p. 452 – as "Last; **conclusive;** terminated – **Not subject to further appeal.** A judgment or order is final if it finally disposes of the rights of the parties."

Final means **"conclusive"** not liable to be altered or set aside. The word **"final"** prohibits an appeal. (*Mitra's Legal & Commercial Dictionary* p. 10).

Payment: Payment signifies satisfaction of a claim. (*Parmeshr v. Atti* AIR 1958) PUNJ. 79).

Satisfaction: *Mitra's Dictionary* has defined it as **payment** or **fulfillment of a legal debt** or obligation; discharge of a legal obligation. Payment in satisfaction amounts to release or discharge of debt; or the debt is completely extinguished; paid and released.

Taking these words from the said letter read in totality or in isolation; without the defendants solicitors in having reserved for themselves or preserving for their clients the right or liberty, to proceed with their so called statutory Right of Appeal; have by their conduct endorsed and acknowledged the judgment debt as one that is due and payable; is a clear admission intended within or under O. 27(3) of the Rules of the High Court 1980 – "where admissions of facts are made by a party to a cause or matter either by his pleadings or **otherwise,** any other party to the cause or matter may apply to the court for such judgment or **Order** as upon those admissions he may be entitled to, without waiting for the determination of **any other question** (in this case the two appeals) between the parties; and the court may give such judgment, or **make such order;** on the application as it thinks just."

The admission of the statement of facts in or by the said letter, originating from the defendants solicitors becomes admissible; as it being made between the same parties without the reservation of any qualification as to its admissibility. The defendants solicitors were absolutely entitled to or ought to have preserved for their clients the right and the liberty to question the judgment; and this they failed to do so!!

Lord Justice Geoffrey Lane in the case of *Rankie & Garton Sons & Co. Ltd.* [1979] 2 All ER 1185 at p. 1191 touching on O. 27 r. 3 said:

> It is obviously better, and one hopes that in future the defendants will be astute to be more precise. It is obviously better if the precision can be reached one way or another by the defendants who are intending to make one or other of those admissions, and then this sort of situation and this sort of argument will not of course arise. But like it or not, there probably always will be letters in the 'No man's land' between those two extremes which the court will have to try to construe in order to discover whether the provisions of the Rules of the High Court O. 27(3) are applicable or not. When that type of admission is under consideration, the single question to be asked is this: Have the defendants made a clear admission ... or not? AND in order to discover that, ... one has to look at the terms of the letter ... in the particular case.

Now turning to the letter dated 18 July 1997; with which I am now concerned; its language is plain by itself, and it applies accurately to the existing facts of the case, expressly conveying what was intended to, by the defendants solicitors, by their choice of words which have been well punctuated and defined by the Dictionaries to admit the only meanings conveyed therein, and therefore the invitation by the defendants solicitors to this court that by virtue of s. 2 of the Evidence Act, affidavit evidence is not admissible in interlocutary proceedings or to read inferences within the lines against that admission; is a submission in futility and fails in lemine because there is no ambiguity in the document.

From the facts and the law as adduced; the very foundation or the substratum of the appeals has been destroyed; and have thus become nugatory. It has always been the fundamental feature of our Judicial System that the courts do only decide issues that are **alive; not dead** or those that have become hypothetical or only of academic importance. In the circumstances, the plaintiffs application under O. 18 r. 19 of the Rules of the High Court is hereby allowed with costs and the two appeals under encls. (12) and (19) are struck off with costs.